

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-120452-16

Date:

July 07, 2016

Decedent =

Date 1 =

Spouse =

Dear

This letter responds to your personal representative's letter of June 24, 2016, and subsequent correspondence requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) of the Internal Revenue Code.

FACTS

Decedent died testate on Date 1 survived by Spouse. Spouse, the executrix of Decedent's estate, filed a timely Form 706. At the time of filing Form 706, Spouse determined the fair market value of the estate was less than Decedent's available exclusion amount. However, Spouse filed a Form 706 for Decedent's estate in order to make the portability election under § 2010(c). At that time, Spouse believed the value of the estate was not sufficient to fund the marital trusts, and thus a QTIP election was not made on that return with respect to any property included on the return.

On the timely-filed Form 706, Spouse reported an incorrect value for an item of tangible personal property. After an additional appraisal and later sale of this item, Spouse realized the original Form 706 was no longer accurate because it failed to include the proper date of death value for the property. Based on the valuation of this property performed after the filing of the Form 706, the marital trusts under Decedent's will were required to be funded.

Accordingly, Decedent's estate now requests an extension of time under § 301.9100-3 to make an election under § 2056(b)(7) to elect to treat the marital trusts as QTIP trusts.

LAW

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is, except as limited by § 2056(b), to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate. Section 2056(b)(1) disallows this deduction where, upon the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), the property is treated as passing to the surviving spouse and for purposes of § 2056(b)(1)(A), no part of the property is treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines the term “qualified terminable interest property” as property: (1) that passes from the decedent, (2) in which the surviving spouse has a qualifying income interest for life, and (3) to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (1) the surviving spouse is entitled to all of the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (2) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property is made by the executor on the return of tax imposed by § 2001. Such an election, once made, is irrevocable.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code

except Subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interest of the government. Section 301.9100-3(a).

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the standards of §§ 301-9100-1 and 301-9100-3 have been satisfied. Accordingly, we grant an extension of time for making the QTIP election under § 2056(b)(7). The election must be made 30 days from the date of this letter. The election should be made on a supplemental Form 706 which also reports the current value of property. The supplemental Form 706 should be filed with the Service Center where the original Form 706 was filed. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for that purpose.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: Melissa Liquerman
Melissa Liquerman
Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes